

NAVAL CHARTER FOR LEASE OF VESSELS

*Exchange of notes at Manila September 26 and December 9, 1947, and
May 6 and June 7, 1948, modifying agreement of March 21, 1947
Entered into force June 7, 1948*

62 Stat. 3870; Treaties and Other
International Acts Series 1954

The American Ambassador to the Secretary of Foreign Affairs

EMBASSY OF THE
UNITED STATES OF AMERICA
September 26, 1947

No. 0039

EXCELLENCY:

I have the honor to refer to the Agreement Between the Government of the United States of America and the Government of the Philippines on Military Assistance to the Philippines signed at Manila on March 21, 1947¹ and to enclose a form of Naval Charter for the lease of vessels made available by the United States Navy to the Government of the Philippines under the terms of that Agreement. The Embassy believes that Your Excellency's Government will find the terms of the proposed Charter, which was prepared under the direction of the Chief of Naval Operations of the United States, satisfactory and will be prepared to designate the person who shall sign the agreement in behalf of the Government of the Philippines. The Commander, U.S. Naval Forces Philippines has been designated as the person to sign the Charter in behalf of the United States.

Your Excellency will observe that Article I of the Charter proposes that the Charter shall remain in effect until terminated by mutual agreement, but in no event beyond the termination date of Public Law No. 454 of the 79th Congress of the United States, Second Session,² or any extension thereof. This is in accordance with Article 5 of the aforementioned Military Assistance Agreement which specifies that title to vessels furnished under the terms of the Agreement on a nonreimbursable basis shall remain in the United States. Your Excellency will also observe that Article IX of the proposed Charter provides that notwithstanding the provisions of Article 5 of the Military Assistance Agreement, the owners and the charterers, that is to say the Government of the United States and the Government of the Philippines, may agree as to any or all of the vessels covered by the Charter that title be transferred to the charterers under the provisions of the above-cited Public Law No. 454.

¹ TIAS 1662, *ante*, p. 84.

² 60 Stat. 315.

Should Your Excellency's Government desire to enter into such an agreement for the transfer of the title to any or all of the vessels as an exception to and notwithstanding the provisions of Article 5 of the Military Assistance Agreement, I am authorized by my Government to make and confirm such an agreement by an exchange of notes on the understanding that such action applies only to naval vessels covered by the proposed Charter and does not establish a precedent for future transfers that may be made of other vessels or of other equipment, which transfers in the absence of special agreements such as that proposed herein, would be guided by Article 5 of the Military Assistance Agreement.

As soon as the competent authorities of Your Excellency's Government have had an opportunity to study the terms of the proposed Charter, which, it is hoped and believed, will be found acceptable in its present form, I shall be happy to receive your comments together with the decision of the Government of the Republic of the Philippines as to whether it desires to take title to the vessels in question. In the event that the decision of Your Excellency's Government is in the affirmative, it is suggested that this note and such affirmative reply be accepted as constituting an agreement to modify the provisions of Article 5 of the Military Assistance Agreement with respect to this particular transaction.

Accept, Excellency, the renewed assurances of my highest consideration.

EMMET O'NEAL

Enclosure:

Draft of proposed Charter

His Excellency

ELPIDIO QUIRINO

*Secretary of Foreign Affairs for the
Republic of the Philippines*

NAVAL CHARTER FOR LEASE OF VESSELS UNDER UNITED STATES PUBLIC
LAW 454 79TH CONGRESS ⁸

In consideration of the mutual interest in matters of common defense, THE GOVERNMENT OF THE UNITED STATES (hereinafter referred to as "the Owners") represented by the _____ acting pursuant to (1) the authority of and in compliance with United States Public Law 454, 79th Congress, 2nd Session, approved June 26, 1946, and of the directions of the President of the United States, (2) the agreement between the Government of the Republic of the Philippines and the Government of the United States of America on military assistance, dated March 21, 1947, and the related agreement as to military bases,⁴ and (3) the concurrence of the Secretary of State of the

⁸ The charter was completed and signed at Manila July 2, 1948.

⁴ Agreement signed at Manila Mar. 14, 1947 (TIAS 1775, *ante*, p. 55).

United States, hereby leases and the Government of the Republic of the Philippines (hereinafter referred to as "the Charterers") acting by and through _____, hereby accepts for the period and upon the terms and conditions stated herein, the vessels (including ships, boats, barges, and floating drydocks) identified on lists annexed hereto, or which in the future may be annexed hereto, upon agreement of the Owners and the Charterers.

ARTICLE I

THIS charter shall operate with respect to each vessel covered thereby, from the date of the delivery of such vessel to the Charterers and shall continue until terminated by mutual agreement between the Owners and the Charterers, but in no event beyond the termination date of United States Public Law 454, 79th Congress, 2nd Session or any extension thereof.

ARTICLE II

EACH vessel, together with its available on board spares and allowances including consumable stores and fuel, shall be or has heretofore been delivered to the Charterers on an "as is, where is" basis, at a time mutually agreed or to be agreed upon; delivery in either event to be evidenced by a delivery certificate in the form prescribed by the Secretary of the Navy. The Charterers shall have the use of all outfitting, equipment, appliances, fuel, consumable stores and spare and replacement parts belonging to the Owners on board each such vessel at the time of its delivery. The fuel and consumable stores on board the vessel at the time of redelivery shall become the property of the owners.

ARTICLE III

EACH vessel is a Naval vessel of the Government of the United States which has been administratively determined to be excess to requirements; and the Government of the United States therefore makes no representation or warranty as to the condition of said vessels, and the said vessels shall be accepted by the Charterers "as is, where is", at the time of delivery thereof; and the Owners shall not be liable to the Charterers by reason of anything arising out of the physical condition of any such vessels.

ARTICLE IV

THE Charterers shall on delivery place each vessel under their own flag, but the title to the vessel shall not thereby be affected.

ARTICLE V

THE Charterers may, for military purposes and at their own expense, remove or alter any of the fittings or arrangements on board any of the vessels and may erect any new things which may be required by the Charterers.

ARTICLE VI

ALL vessels during the currency of this charter shall be at the absolute disposal and under the complete control of the Charterers; the Charterers shall hold harmless and indemnify the Owners against any and all costs, expenses, losses, damages, and claims (including those arising by reason of the transfer or use of Bofors 40 mm guns or guns of similar types made or produced under or pursuant to an agreement dated June 21, 1941 between the Government of the United States of America and Aktisbolaget Bofors), regardless of the nature thereof, arising out of or connected with the transfer, use, and operation of the vessel, and whether or not said liability arises out of contract or tort; and nothing contained herein shall be construed to give rise to or to permit or to confer or recognize the existence of any lien of any character against any of such vessels, but the Charterers shall indemnify and hold harmless the Owners by reason of any lien liabilities that may be chargeable to or asserted against any such vessel.

ARTICLE VII

UPON the expiration of this charter, or upon prior redelivery of any vessels, each vessel, unless lost, shall be redelivered at a port of the United States of America or other location as may be designated by the Owners in such condition as the vessel is in at the termination of its operational service. Should any vessel during the currency of this charter sustain any damage from any cause whatsoever, as in the opinion of the Charterers render it expedient to treat her as a total loss, the Charterers shall, where practicable, consult with the Owners before declaring her to be a total loss.

ARTICLE VIII

It is understood and agreed that, in the event of a total loss of any vessel subject to this Charter, all right, title and interest of the Owners in and to such vessel shall vest in the Charterers as of the date of the loss thereof.

ARTICLE IX

NOTWITHSTANDING the provisions of Article V [5] of the agreement between the Government of the Republic of the Philippines and the Government of the United States of America on military assistance dated March 21, 1947 and this Charter, the Owners and the Charterers may agree, as to any or all of the vessels covered by this Charter, that title be transferred to the Charterers under the provisions of United States Public Law 454, 79th Congress, 2nd Session. In the event that it is agreed that title to any or all of the vessels covered by this Charter be transferred to the Charterers, such vessels shall be stricken from the list of vessels covered by this Charter

and transfer of title shall be evidenced by a delivery certificate or document in a form to be prescribed by the Secretary of the Navy, and shall be made upon the express condition that the Government of the Republic of the Philippines will hold harmless and indemnify the Government of the United States, its officers, agents, servants and employees against any and all claims, demands, losses, damages, expenses and costs regardless of the nature thereof, arising out of or connected with the transfer of title to such vessel or vessels or the use and operation thereof by the Government of the Republic of the Philippines, whether or not said liability arises out of contract or tort; and without limiting the generality of the foregoing, will hold harmless and indemnify the Government of the United States, its officers, agents, servants and employees against any and all claims, demands, expenses, damages and costs arising or growing out of transfer to the Government of the Republic of the Philippines of Bofors 40 mm guns or guns of similar type made or produced under or pursuant to an agreement dated June 21, 1941 between the Government of the United States of America and Aktiebolaget Bofors.

ARTICLE X

THE Charterers shall not, without the consent of the Owners, sell or transfer or assign this charter or any interest therein or make any arrangement whereby the maintenance, management or operation of any of the vessels is to be performed by anyone not an officer, employee, or agent of the Charterers.

ARTICLE XI

THE Charterers shall not, as to any vessels covered by this Charter or as to any vessels title to which is transferred pursuant to Article IX hereof, relinquish physical possession of or transfer title to any of the vessels, equipment, outfitting, appliances or spare and replacement parts on board, without the specific consent of the President of the United States and shall not (1) permit use of any of the vessels or property so transferred, (2) disclose any plan, specification or other information pertaining thereto, or (3) disclose any technical information furnished, by or to anyone not an officer, employee, or agent of the Government of the Republic of the Philippines; and security classifications covering such equipment will be safeguarded in accordance with the requirements imposed thereon by the Secretary of the Navy.

ARTICLE XII

As long as this Charter shall remain in effect the Government of the Republic of the Philippines shall not engage or accept the services of any personnel

of any Government other than the United States of America for duties of any nature connected with the use and operation of the vessels transferred pursuant to this Charter, except by mutual agreement between the Government of the Republic of the Philippines and the Government of the United States of America.

Done at _____ this _____ For and on behalf of the Government
day of _____ 1947. of the United States of America:

Done at _____ this _____ For and on behalf of the Government
day of _____ 1947. of the Republic of the Philippines:

DELIVERY CERTIFICATE

In accordance with the Charter between the Government of the United States of America and the Government of the Republic of the Philippines dated _____ covering the transfer of Naval vessels and equipment pursuant to Public Law 454-79th Congress, the undersigned, as authorized representative of the Navy of the Republic of the Philippines, accepts the below described craft, together with its on board equipment, stores and fuel from _____ authorized representative of the United States Navy.

U.S. NAVAL TYPE	DESIGNATION	NAME	PHILIPPINE NAME
For the Philippine Navy			

Instructions: Delivery Certificate to be executed in quadruplicate. Original to be forwarded to BuShips, copy to BuSandA (Foreign Accounts Division); CNO (Op-414); Copy to Philippine Representative.

The Secretary of Foreign Affairs to the American Ambassador

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FOREIGN AFFAIRS

MANILA, December 9, 1947

EXCELLENCY:

I have the honor to refer to your note of September 26, 1947, enclosing a copy of the proposed "Naval Charter for Lease of Vessels" between the Republic of the Philippines and the United States of America for consideration of the appropriate authorities of my Government.

After a study of the proposed agreement, I am happy to inform you that the draft is satisfactory to the Philippine Government with the exception of the following observations:

(a) That the lists of vessels referred to in the first paragraph of the note which will be annexed to the agreement shall include only such vessels as may be selected by the Republic of the Philippines acting through the Chief of Staff of the Armed Forces of the Philippines.

(b) That the vessels so selected by the Republic of the Philippines through its Chief of Staff of the Armed Forces shall be accepted by the charterers in A-1 operational condition complete with all items of equipment, appliances, fuel, consumable stores and spare and replacement parts in accordance with the standard table of allowances.

With the above understanding, I shall be ready to sign the agreement in behalf of my Government.

My Government appreciates the opportunity accorded to the Republic of the Philippines to own the vessels covered by the agreement in accordance with the provisions of Article IX of the draft. I shall convey to the Embassy in due course the decision of the Philippine Government as to the acquisition of title to the vessels in question.

I have also been recently informed that the present training unit of the United States Navy consisting of eight officers and twenty-eight enlisted men who are assisting the present Off-Shore Patrol Training Center at Cavite in the training of the personnel of the Philippine Off-Shore Patrol will be disbanded on or before January 1, 1948 due to lack of statutory funds for their maintenance. The United States Naval Training Unit has been rendering invaluable services to the Off-Shore Patrol Training Staff and its withdrawal will seriously interrupt the training program of the Off-Shore Patrol which is just starting and growing.

I wish to recall in this connection that Article 6 (d) of the Military Assistance Agreement provides for making available selected facilities of United States Army and Navy Training establishments to provide training for key personnel of the Philippine armed forces and in order to comply with the spirit and purpose of the said agreement between our two Governments, I have the honor to suggest that the present United States Naval Training Unit be either retained or absorbed by the United States Military Advisory Group.

Accept, Excellency, the renewed assurances of my highest consideration.

ELPIDIO QUIRINO

His Excellency EMMET O'NEAL
American Ambassador
United States Embassy
Manila

*The American Chargé d'Affaires ad interim to the Secretary
of Foreign Affairs*

EMBASSY OF THE
UNITED STATES OF AMERICA

May 6, 1948

No. 1335

EXCELLENCY:

I have the honor to advert to Your Excellency's note of December 9, 1947 referring to the Ambassador's note No. 0039, September 26, 1947 in regard to a proposed agreement by exchange of notes which would cover the transfer of title, notwithstanding the provisions of Article V of the Military Assistance Agreement of March 21, 1947, to certain naval vessels which would be made available under charter to the Philippine Government by the United States Navy in accordance with the terms of the latter Agreement.

The second paragraph of Your Excellency's note states, referring to the form of "Naval Charter for Lease of Vessels under United States Public Law 454, 79th Congress" as an "Agreement":

"After a study of the proposed agreement, I am happy to inform you that the draft is satisfactory to the Philippine Government with the exception of the following observations:

"(a) That the lists of vessels referred to in the first paragraph of the note which will be annexed to the agreement shall include only such vessels as may be selected by the Republic of the Philippines acting through the Chief of Staff of the Armed Forces of the Philippines.

"(b) That the vessels so selected by the Republic of the Philippines through its Chief of Staff of the Armed Forces shall be accepted by the charterers in A-1 operational condition complete with all items of equipment, appliances, fuel, consumable stores and spare and replacement parts in accordance with the standard table of allowances.

"With the above understanding, I shall be ready to sign the agreement in behalf of my Government."

A copy of Your Excellency's note having been sent to the Commander, United States Naval Forces, Philippines, the latter commented to his superiors at Washington as follows:

"(a) The provision that only such vessels as may be selected by the Republic of the Philippines will be transferred under the charter, is agreeable to this command.

"(b) The provision that such vessels as are selected by the Republic of the Philippines shall be in A-1 condition, complete with all items of equipment, appliances, fuel, consumable stores and spare and replacement parts in accordance with the standard table of allowances, is not in accordance with

present directives. Neither the basic agreement under which the vessels are being transferred nor the proposed procedure for the charter require the U. S. Government to furnish fuel or consumable stores on a non-reimbursable basis. Items of equipment, appliances and spare parts are furnished on a basis of whether or not they are in the area and excess to the needs of the Navy.

“(c) This command is necessarily guided in the entire vessel transfer program by directives from higher authority. Such directives, to date, specify that every attempt shall be made to make vessels scheduled for transfer operable in so far as possible. No funds are available for a greater amount of work nor for the supplying of stores or spares which would have to be procured elsewhere than from Navy excess stocks.”

The Chief of Naval Operations on April 15, 1948 expressed concurrence with the foregoing comments by COMNAVPHIL upon the Philippine reservations, as copied above, and, in turn, I have been authorized by the Secretary of State of my Government to convey those views to Your Excellency as representing the decision of that highest professional United States Navy authority.

Assuming the continuance of the interest of the Department of National Defense in acquiring the vessels in question, it would seem only fair to report to Your Excellency that information has informally come to the Embassy that, because of impending appropriation expirations, it would be desirable to arrange to take deliveries before June 30, 1948.

Accept, Excellency, the renewed assurances of my highest consideration.

THOMAS H. LOCKETT
Chargé d’Affaires a.i.

His Excellency

ELPIDIO QUIRINO

*Secretary of Foreign Affairs of the
Republic of the Philippines*

*The Undersecretary of Foreign Affairs to the American Chargé d’Affaires
ad interim*

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FOREIGN AFFAIRS

MANILA, June 7, 1948

SIR:

I wish to refer to His Excellency the United States Ambassador’s note (1335) of May 6, 1948, in connection with our note of December 9, 1947 replying to the Ambassador’s note of September 26, 1947, regarding a proposed agreement by exchange of notes which would cover the transfer

of title, notwithstanding the provisions of Article V of the Military Assistance Agreement of March 21, 1947, to certain naval vessels which would be made available under charter to the Philippine Government by the United States Navy in accordance with the terms of the latter Agreement.

The third and fourth paragraphs of the Ambassador's note of May 6, 1948, in considering the Philippine reservations expressed in the second paragraph of our note of December 9, 1947, state:

"A copy of Your Excellency's note having been sent to the Commander, United States Naval Forces, Philippines, the latter commented to his superiors at Washington as follows:

'(a) The provision that only such vessels as are selected by the Republic of the Philippines will be transferred under the charter, is agreeable to this command.

'(b) The provision that such vessels as are selected by the Republic of the Philippines shall be in A-1 condition, complete with all items of equipment, appliances, fuel, consumable stores and spare and replacement parts in accordance with the standard table of allowances, is not in accordance with present directives. Neither the basic agreement under which the vessels are being transferred nor the proposed procedure for the charter require the U.S. Government to furnish fuel or consumable stores on a non-reimbursable basis. Items of equipment, appliances and spare parts are furnished on a basis of whether or not they are in the area and excess to the needs of the Navy.

'(c) This command is necessarily guided in the entire vessel transfer program by directives from higher authority. Such directives, to date, specify that every attempt shall be made to make vessels scheduled for transfer operable in so far as possible. No funds are available for a greater amount of work nor for the supplying of stores or spares which would have to be procured elsewhere than from Navy excess stocks.'

"The Chief of Naval Operations on April 15, 1948 expressed concurrence with the foregoing comments by COMNAVPHIL upon the Philippine reservations, as copied above, and, in turn, I have been authorized by the Secretary of State of my Government to convey those views to your Excellency as representing the decision of that highest professional United States Navy authority."

I am glad to inform you that, after proper consideration by the appropriate Philippine authority, the Government of the Republic of the Philippines hereby accepts the conditions of transfer as hereinabove set forth by the Commander, United States Naval Forces, Philippines, and concurred in by the Chief of Naval Operations of the United States, in so far as they affect the provisions of the proposed "Naval Charter for Lease of Vessels under United States Public Law No. 454, 79th Congress".

My Government also hereby expresses its desire to take title to the vessels in question and to enter into such an agreement for the transfer of title to any or all of the vessels as an exception and notwithstanding the provisions of Article V of the Military Assistance Agreement, on the understanding that such action applies only to naval vessels covered by the proposed Charter and does not establish a precedent for future transfers that may be made of other vessels or of other equipment, which transfers in the absence of special agreements such as that provided for herein, would be guided by Article V of the Military Assistance Agreement. My Government considers the Ambassador's notes of September 26, 1947 and May 6, 1948 and our note of December 9, 1947 as constituting an agreement to modify the provisions of Article V of the Military Assistance Agreement with respect to this particular transaction.

It will therefore be highly appreciated if appropriate steps may be taken by the Embassy for an expeditious transfer of title of these vessels to the Republic of the Philippines in accordance with Article IX of the proposed charter so that we may have full authority to use these vessels in any way deemed expedient. The Honorable, the Secretary of National Defense, an official of this Government, will be designated to sign the agreement in behalf of the Government of the Republic of the Philippines.

Accept, Sir, the renewed assurances of my high consideration.

BERNABE AFRICA
Undersecretary

THOMAS H. LOCKETT, Esquire
Chargé d'Affaires, a. i.
American Embassy
Manila